

Nashua School District filed its answer on January 21, 1997 after which this matter was heard by the PELRB on February 13, 1997.

FINDINGS OF FACT

1. The Nashua School District is a "public employer" of food service workers employed in its public school system, within the meaning of RSA 273-A:1 X.
2. The Nashua Teachers Union, Local 1044, AFT is the duly certified bargaining agent for food service workers employed by the District.
3. The District and the Union were parties to a collective bargaining agreement (CBA) for the period September 1, 1993 through August 31, 1995. The parties began negotiations for a successor agreement in April of 1995. (Union Exhibit No. 1, page 1.) Between then and the time the parties reached a tentative agreement (TA), which the union took to its membership on October 1, 1996, there were numerous changes in city government in Nashua, e.g., a change of mayor and corporation counsel along with changes in the composition of the employer's negotiating team.
4. Actionable events alleged in the pending ULP must have occurred since July 6, 1996, six months before this complaint was filed. RSA 273-A:6 VII. The last negotiating session before July 6, 1996 was held on June 20, 1996. The parties then agreed to suspend negotiations until September 1996, as acknowledged both in the testimony of Union representative Toomey and Business Administrator Conrad.
5. The parties agreed on a 2.5% raise by September 25, 1996 after meetings on September 13 and 19, 1996. The Union took this proposal to its membership on October 1, 1996 and secured ratification. Representative Toomey signed and dated a memo confirming this ratification on December 3, 1996. (District Exhibit No. 1) On December 4, 1996 he sent typewritten notification of that ratification to Superintendent Joseph Guiliano. (District Exhibit No. 2.) By December 6, 1996, Business Administrator Conrad sent a typewritten memo to the Human Resources Committee informing them of the ratification and indicating his willingness to discuss the matter with them on December 11, 1996. (District Exhibit

No. 3.) Conrad said the Board of Education approved the contract on December 16, 1996. Reviews by the Human Resources Committee and by the Legal Department occur before the proposed contract is submitted to the Board of Aldermen for approval of cost items. (Board Exhibit No. 4.)

6. The Board of Aldermen had not approved the proposed 1995-96 CBA between December 6, 1996 and January 6, 1997 when these charges were filed. The Union asserts that such approval is not required by the Aldermen since the cost items involved in funding the new CBA could be paid for outside of the school district budget. Business Administrator Conrad testified that the \$10,876 settlement costs would be funded through the Food Services Fund without any impact on the property tax rate.

DECISION AND ORDER

The language found at RSA 273-A:6 VII requires us to dismiss any alleged violation under RSA 273-A:5 which occurred more than six (6) months prior to the filing of the ULP. There are numerous events cited by the Union in its complaint which pre-date July 6, 1996, six months before the filing of the ULP on January 6, 1997. We make no determination as to whether any of those events constitute unfair labor practices because they are time barred.

As for events which occurred between July 7, 1996 and January 6, 1997, we find no conduct which violates RSA 273-A:5 I (a) or (e), as alleged. The parties appear to have suspended negotiations in July and August. This cannot be attributed to bad faith bargaining by the District. Thereafter, the parties met on September 13, 19 and 25 whereupon they reached a TA. The Union ratified on October 1, 1996. There is no evidence that the Union conveyed this ratification to the District until December 3, 1996. This "delay" cannot be laid at the feet of the District. Then, the District processed their side of the TA through the Human Resources Committee and the School Board between December 4, 1996 and the filing of this ULP on January 6, 1997. The charges miss the mark of failing to negotiate or bargaining in bad faith under RSA 273-A:3, let alone the RSA 273-A:5 I (a) charge.

Collaterally, the union would have us find the District inappropriately and unnecessarily was taking the final approval

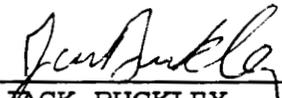
to the Board of Aldermen and/or was letting the Board of Aldermen intervene in the approval process even when, allegedly, no tax dollars were involved. We disagree. The Board of Aldermen are the legislative body of the City of Nashua and, as such, has responsibilities under RSA 273-A:3 II (b) and 273-A:1 IV. In Appeal of City of Franklin, 137 NH 723 at 727 (1993), the New Hampshire Supreme Court addressed the following argument and said:

The disagreement revolves around the words "whose implementation requires an appropriation" and, more particularly, the word "requires." The association and the school district [both being on the same side] argue that the monetary provisions at issue are not "cost items" because no additional appropriation by the city council would be required to implement them. The city, on the other hand, maintains that the provisions are "cost items" because they could not have been implemented without an appropriation. Our examination of the statute and related case law persuades us that the city is correct.

We believe the same principles apply in this case, notwithstanding that Nashua has a Board of Aldermen rather than a city council. The ULP is hereby DISMISSED.

So ordered.

Signed this 20th day of March, 1997.



 JACK BUCKLEY
 Alternate Chairman

By unanimous decision. Alternate Chairman Jack Buckley presiding. Members Richard Molan and William Kidder present and voting.